IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI
COURT-IV

Date of Hearing/ Decision : **21.03.2017**

Appeal No. E/1826-1827/2012 -EX (SMC)

[Arising out of the Order in Appeal No. OIA-IND/CEX/000/APP/101AND102/2012 dated 30.03.2012 passed by Commissioner (Appeals), Central Excise, Indore]

M/s. Burplast Packaging Pvt. Limited … Appellant
Shri S.K. Burman, Director

vs.

Commissioner of Central Excise, Indore … Respondent

Appearance:

Rep. by Shri Manish Saharan, Advocate for the Appellant.
Rep. by Shri D. Singh, AR for the Respondent.

Coram: Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 52495-52496/2017 – EX (SMC)

Per Mr. V. Padmanabhan

The present appeal filed by the Revenue is against OIA No. OIA-IND/CEX/000/APP/101AND102/2012 dated 30.03.2012 passed by Commissioner (Appeals), Central Excise, Indore.

2. Appellant M/s Burplast Packaging Pvt. Ltd. is engaged in the manufacture of plastic containers, caps, plugs which are subject to excise duty. Appellant Shri S.K. Burman, is the Director of the above referred appellant company. The appellant

company during the relevant period cleared the plastic containers, caps, and bottles to M/s Dabur India Limited for manufacture of their final product with their logo “Dabur” embossed on those products. The Department was of the view that since the appellant was clearing those goods with brand name of M/s Dabur India Ltd. they were not entitled to the benefit of SSI exemption under Notification No.8/2003-CE dated 1.3.2003. On this premise, a show cause notice raising demand of Rs.7,35,174/- was issued to the appellant company. Show cause notice also proposed to impose penalty on the company as well as its Director Shri S.K. Burman. Show cause notice was adjudicated vide order in original dated 31.10.2011 whereby the Additional Commissioner confirmed duty demand raised by the show cause notice against the appellant company along with interest. Equal amount of penalty was imposed on the appellant company besides penalty of Rs.75,000/- was imposed on the appellant Shri S.K. Burman. The appellants preferred appeal against the aforesaid order which was dismissed by the Commissioner (Appeals) vide impugned order in appeal dated 30.3.2012.

3. Shri Manish Saharan, Id. Counsel for the appellant, has pleaded that impugned order is not sustainable for the reason that the appellant has been denied SSI exemption ignoring Notification No. 24/2009-CE (N.T.) dated 21.10.2009, issued under Section 11C of the Central Excise Act, 1944 whereby, it was retrospectively clarified that brand name used on packaging material supplied to the person owning the brand name, would not be the basis for denial of SSI exemption to the manufacturer of said final products.

3. With the above back ground, heard Shri Manish Saharan, ld. Advocate for the appellants and Shri D. Singh, ld. DR for the Revenue.

4. In order to appreciate the contentions of respective parties, it would be useful to have a look on the Notification No.24/2009-CE dated 24.10.2009 which reads as under:

Brand name used on packing materials — SSI Exemption not deniable — Exemption w.e.f. 1-10-1987 granted

Whereas the Central Government is satisfied that a practice was generally prevalent regarding levy of duty of excise (including non-levy thereof) under Section 3 of the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as the said Act), on goods of description given in column (2) of the table below, manufactured by a unit availing benefit of Notification number given in column (4) of the table below, affixing the brand name or trade name of another person who was not eligible for the grant of exemption under the said notification and that such goods were liable to duty of excise which was not being levied under Section 3 of the said Act according to the said practice during the period as specified in column (3) of the said table, namely :-

Sl. No.	**Description**	**Period**	**Notification number**
(1)	**(2)**	**(3)**	**(4)**
1.	Packing materials, namely, printed cartons of paper or paper board, metal containers, high density polyethylene woven sacks adhesive tapes, stickers, pilfer proof caps, crown corks, metal labels.	1St October, 1987 to 31st August, 2008	(i) ..... (ii) .... (iii) .... (iv) .... (v) .... (vi) .... (vii) .... (viii) ... (ix) .... (x) .... (xi) ... (xii) ... (xiii) ... (xiv) ...

			(xv) Notification No. 8/2003-CE., dated 1-3-2003 till issue of amending Notification No. 47/2008-C.E., dated 1-9-2008 (xvi) ……
2.	…..	1st October, 1987 to 10th February 2009	(i) . (ii) .. (iii) … (iv) … (v) … (vi) … (vii) (viii) (ix) (x) (xi) (xii) (xiii) … (xiv) … (xv) (xvi) …
3.	…	1st October, 1987 to 6th July, 2009	(i) … (ii) (iii) (iv) … (v) … (vi) … (vii) …. (viii) …. (ix) … (x)
			(xi) … (xii) … (xii) … (xiv) … (xv) … (xvi) …

5. Notification No. 47/2008-CE, dated 01.9.2008 which reads as follows:

SSI Exemption to packing materials bearing brand name/ trade name of another - Amendment to Notification No. 8/ 2003-C.E.

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 8/2003-Central Excise, dated the 1st March, 2003 [G.S.R. 138(E), dated the 1st March, 2003], namely

In the said notification,

(i) in paragraph 4, after clause (d), the following shall be inserted, namely :-

"(e) Where the specified goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels."

(ii) after paragraph 4A, the following shall be inserted, namely
"4B - Notwithstanding anything contained in the preceding paragraphs, the exemption in respect of goods specified in clause (e) of paragraph 4, contained in this notification, shall be restricted to rupees ninety lakhs for the remaining part of the financial year 2008-09."

[Notification No. 47/2008-C.E., dated 01-9-2008]

6 . After careful consideration of the notifications amending the SSI Notification No. 8/2003-CE dated 01.03.2003 with retrospective effect, covering the period 01.10.1987 to 01.09.2008, we find that, absolutely there is no justification in upholding the demand on the goods manufactured by the appellant i.e. PP Caps with brand name 'Dabur' and will be clearly eligible for the benefit of SSI Notification, subject to fulfillment of other conditions specified therein.

7. In view of the above discussions, impugned order is set-aside and both the appeals are allowed with consequential benefit to the appellant, if any.

[Order dictated and pronounced in the open court]

(**V. Padmanabhan**)
Member (Technical)

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